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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,
Plaintiff,
v.
(4) KENNY MATTHEW MIKSCH,
Defendant.

) Case No. 21-CR-0121 JD-4

)
) **UNITED STATES' SENTENCING
MEMORANDUM**

) Sentencing Date: February 22, 2022
) Time: 10:30 a.m.
) Judge: Hon. James Donato

)
)

1 **I. INTRODUCTION**

2 In 2020, defendant Kenny MIKSCH helped lead an armed militia group that discussed, trained,
 3 and prepared for hostilities against the government and confrontations with law enforcement. He was
 4 appointed a First Lieutenant of the “Grizzly Scouts” and took part in a forum for members to encourage
 5 one another and fuel the aggressions of the group toward violence. As their discussions escalated, one
 6 member of the group went on to allegedly target and shoot multiple law enforcement officers in the Bay
 7 Area, killing two of them.

8 While the second of two fatal incidents unfolded on June 6, 2020, MIKSCH advised that man
 9 about police activity as it happened outside his home. Then, MIKSCH’s immediate reaction when faced
 10 with the reality of that man’s horrific actions, given the nature of the group’s prior discussions and
 11 preparations, was to obstruct justice—he conspired with other members of the group to destroy
 12 evidence. Rather than terminate any further activities with the group or come forward to authorities
 13 about the man, MIKSCH and his codefendants did the opposite: they destroyed records and
 14 communications of the group and moved their discussions to an alternative communications platform,
 15 encouraging others to reconnect with them there. Only after federal agents executed search warrants at
 16 their residences two months later, seizing numerous firearms including assault-style weapons, stockpiles
 17 of ammunition, and tactical equipment, did the group’s activities finally appear to cease.

18 Accordingly, MIKSCH and his codefendants must be held accountable for their crimes with
 19 meaningful custodial sentences. The United States respectfully recommends that the Court sentence
 20 MIKSCH to 10 months of custody (near the low-end of the applicable sentencing guidelines of 8 to 14
 21 months in this case), followed by three years of supervised release. The government maintains its
 22 recommendation for a custodial sentence in view of MIKSCH’s conduct—including his
 23 communications about relevant police activity during the second fatal incident, which MIKSCH
 24 subsequently destroyed—but recommends two months less of custody than RUSH and YBARRA given
 25 that he did not found the militia group or appear to have as close contacts with the man. Given
 26 MIKSCH’s history and characteristics, the nature and circumstances of the offense, the seriousness of
 27 the offense, and the need for deterrence, the government submits that this sentence would be sufficient
 28 but not greater than necessary, based on the guidelines and factors under 18 U.S.C. § 3553(a).

1 II. BACKGROUND

2 In April 2020, co-defendant Jessie RUSH organized an armed, anti-government militia group
 3 called the “Grizzly Scouts” (“Grizzlies”) as the group’s commanding officer. *See* Presentence
 4 Investigation Report (Dkt. No. 105, “PSR”) ¶ 19. RUSH recruited several of the Grizzlies’ members,
 5 including MIKSCH and codefendants Robert BLANCAS and Simon Sage YBARRA, through a
 6 Facebook group he created. PSR ¶¶ 19–20. The Facebook group’s front page stated the group’s
 7 association with so-called “boogaloo” extremists:¹ “they say the west won’t boog, were [sic] here to
 8 gather like minded Californians who can network and establish local goon squads”. *Id.* RUSH made
 9 MIKSCH and BLANCAS lieutenants, and YBARRA a corporal. *Id.* MIKSCH’s responsibilities
 10 included training and firearms instruction. *Id.* Another man—one who will be discussed at length along
 11 with the defendants in this matter—was given the rank of “staff sergeant.” *Id.*

12 The Grizzlies discussed, trained, and prepared for violent confrontations with the government
 13 and attacks on law enforcement. PSR ¶ 22; Plea Agmt. (Dkt. No. 81) at ¶ 2. In May 2020, for example,
 14 the Grizzlies prepared for operations, including at a protest in Sacramento. In advance, they distributed
 15 “Operations Orders” that identified law enforcement as “enemy forces” and considered the possibility of
 16 using lethal force. PSR ¶ 22 (“Contact with hostile forces … If there is a PERCEIVED or what could be
 17 articulated as an IMMEDIATE threat, engage the enemy swiftly and with extreme lethality.”). The
 18 orders also discussed taking prisoners, stating “POWs will be searched for intel and gear, interrogated,
 19 stripped naked, blindfolded, driven away and released into the wilderness blindfolded with hands bound.
 20 We will not execute POWs; however, we will not render medical aid to enemy WIA [wounded in
 21 action]. Enemy WIA will be given some water, searched for intel, interrogated, depending on nature of
 22 injury driven to the wilderness or left to their god.” *Id.* In other words, the best outcome for a police

23
 24 ¹ As explained in the indictment and PSR, the “boogaloo” is not a single cohesive group, but
 25 rather a loose concept which has become a rallying point for some extremists. The term is sometimes
 26 used by militia extremists and racially or ethnically motivated violent extremists (RMVE), who allude to
 27 it using shorthand such as “big igloo” or “big luau” and imagery such as igloos or Hawaiian shirts. The
 28 term has particularly resonated with militia extremists, who have adopted it to reference an impending
 politically-motivated civil war or uprising against the government following perceived incursions on
 Constitutional rights—including the Second Amendment—or other perceived government overreach.
 Some RMVEs have used the term to reference an impending race war—or other conflict that will lead to
 the collapse of the “system,” including the U.S. government and society. PSR ¶ 16.

1 officer captured by the Grizzlies would be getting stripped naked and dumped in the wilderness,
 2 blindfolded and bound, quite possibly to die. The order also established a so-called “QRF,” or a Quick
 3 Reaction Force sub-unit that included RUSH, MIKSCH, and the staff sergeant, in the event that whoever
 4 they sent into the protest ran into trouble. *Id.* QRF members were required to carry a rifle and pistol
 5 and extra magazines and their job was to rescue the recon element. *Id.*

6 Toward the end of May and beginning of June, the Grizzlies’ discussions of attacks on law
 7 enforcement matured. Between May 26 and 27, 2020, YBARRA and the staff sergeant began to discuss
 8 plans. PSR ¶ 22. YBARRA wrote, “I feel it. I partially just want a concrete plan”. “I feel like that one
 9 had some holes”, he said. *Id.* The man YBARRA was communicating with said his vision was “cartel
 10 style.” *Id.* YBARRA responded, “Bro we have to talk about this in person”. “There needs to be a
 11 protocol in place, and it needs to be done a certain way. We can talk about this and reach an
 12 understanding about how this needs to work.” *Id.* They met behind a gas station in Los Gatos, near
 13 YBARRA’s home, and sat in the man’s van and assembled an assault rifle. *Id.* The day after that, May
 14 28, 2020, the man contacted YBARRA about attending a protest in Oakland the next day, on May 29,
 15 2020, to “snipe some you know what’s [sic].” *Id.* YBARRA does not appear to have responded, but the
 16 man is alleged to have ambushed two federal protective service officers at the federal courthouse in
 17 Oakland that night, killing one and wounding another. That murder and attempted murder are charged
 18 in a separate federal case arising out of that incident. PSR ¶¶ 8–9, 17–18.

19 At the same time YBARRA was discussing plans to attack law enforcement with that staff
 20 sergeant, YBARRA was also reporting those conversations to RUSH. On May 26–27, 2020, he told
 21 RUSH that he had spoken with the man and that he “just wanted to make sure we are on the same page,
 22 and that targeting innocents doesn’t fly with me even if they are wearing a badge.” RUSH agreed, but
 23 added, “yea we need to actually develop targets and cases, be smart. They want war, then we bring em
 24 war.” PSR ¶ 23. In other words, it wasn’t the idea of killing people that RUSH or YBARRA opposed,
 25 they just didn’t want to kill purportedly low-value targets. RUSH confirmed this a moment later: “we
 26 can start developing case files, gathering intel, and doing it just like big bro does” “im not about the
 27 fireworks” “im more like a surgeon”. *Id.* RUSH also said “the gov spent 100s of thousands of dollars
 28 on training me, im gonna use that shit”, meaning that he was going to put his military training to use in

1 planning their attacks. *Id.*

2 On May 29, 2020, within an hour after the shooting at the federal courthouse in Oakland,
 3 MIKSCH sent a notification stating “Federal Building Security Guard Shot” to a group labeled “riot
 4 med qrf” including BLANCAS and YBARRA, going on to say, “So it begins”. PSR ¶ 23. MIKSCH
 5 went to Oakland that night and exchanged Facebook messages about the protests in Oakland. *Id.*

6 On June 1, 2020—just three days after the shootings in Oakland—YBARRA and the staff
 7 sergeant continued to communicate, including with YBARRA stating, “bro I’m sorry I didn’t get back to
 8 you, I was a little spooked because you reached out to me about that over an unsecure line.” PSR ¶ 23.
 9 Meanwhile, the Grizzlies ratcheted up their rhetoric and preparation for attacks on law enforcement.
 10 The staff sergeant sent the group a link to an article about the potential invocation of the insurrection act
 11 in response to the nationwide protests in the wake of George Floyd’s death. In response, RUSH said:
 12 “That effectively means the federal gov has declared war in things they’re afraid of. Anything like this
 13 or a move that resonates with this is our trigger point. If y’all aint giving with that bail now”. PSR ¶ 24.
 14 In other words, RUSH was preparing the group for war against the government if the Insurrection Act,
 15 10 U.S.C. § 252, was invoked. And in response to the staff sergeant’s further statement about “easy
 16 pickins first to demoralize” regarding law enforcement, RUSH told the group, “Get right with your gods,
 17 families and selves.” “If you weren’t ready, I sure as hell hope you fake the funk good,” he added. *Id.*
 18 “This is unfortunately one instance where fake it till you make it doesn’t cut it,” MIKSCH responded.
 19 *Id.* “I think it’s time to swap your plates bud” RUSH told MIKSCH, meaning, it was time for MIKSCH
 20 to put heavier-duty protective plates in his bullet-proof vest. And after the staff sergeant inquired to the
 21 group regarding the Oakland Police Department, “Well shall we go out tonight and thin their herd? … I
 22 was under the impression the guard would be there but if theyre not there yet then we still have a
 23 chance”, RUSH responded, “even when they show up you still have a chance”. *Id.*

24 By June 2 and 3, 2020, the Grizzlies began to discuss whether it would be better to provide aid to
 25 “Antifa” groups to encourage them to attack law enforcement first, then open their own campaign of
 26 violence against a (presumably) weakened police force. In referencing this, BLANCAS called it “the
 27 tactically sound option”. PSR ¶ 25. YBARRA first said he thought aligning with those groups would
 28 be short-sighted, saying “I don’t want to get taken out of the fight before shit kicks off just because I

1 engaged in a psy-op". But the staff sergeant went on to say "Tactically, we should be yeeting solo cops
 2 and taking their shit" (that is, shooting police officers and stealing their equipment) and BLANCAS
 3 insisted that "Them fucking each other up only helps us". PSR ¶ 25. In response, YBARRA gave a
 4 thumbs-up emoji. *Id.* Step One, as BLANCAS saw it, was "Antifa" and police engaging in armed
 5 confrontation. "[S]tep two, cops win. Third step is we start yeeting cops when they're done. I'm also
 6 totally down with disguising ourselves as antifa and [yeeting] some cops that way", he said, meaning
 7 that he was willing to pose as member of "Antifa" and kill police officers as a way to kick off an all-out
 8 confrontation between the police and those groups. *Id.*

9 Throughout these conversations, the staff sergeant advocated openly for attacking the police
 10 immediately. None of the other Grizzlies, including the defendants here, disagreed with him; to them, it
 11 was a question of "When" or "How," not "If." Three days later, on June 6, 2020 in Santa Cruz County,
 12 that same man is alleged to have gotten into a shootout with sheriff's deputies, killing one and wounding
 13 another. PSR ¶¶ 10–18. In the moments leading up to those shootings (which are the basis for pending
 14 state murder and attempted murder charges), the man communicated with the rest of the Grizzlies,
 15 asking them to come to his aid. PSR ¶ 26. MIKSCH—who later admitted that he and the group
 16 generally listened to police scanners—notified the group that "they," meaning the sheriff's deputies,
 17 "have a dog," meaning a police K9 (which the deputies in fact had), but that he didn't think it was a
 18 planned raid because "[t]rue raids are usually done at like 3-4" in the morning. *Id.* RUSH agreed. But
 19 the staff sergeant believed the deputies were there for him. "Dudes I offed a fed" he told the other
 20 Grizzlies. *Id.* RUSH's first response was to tell the man to erase the evidence on his phone and "exfil,"
 21 meaning, evade capture. PSR ¶ 27; RUSH Plea Agmt. (Dkt. No. 83) at ¶ 2.

22 Sheriff's deputies captured the man later that day, but MIKSCH and his co-defendants moved
 23 quickly to destroy evidence to obstruct official proceedings. PSR ¶¶ 13, 27–28. BLANCAS
 24 immediately destroyed files related to the Grizzlies' operations, and YBARRA drove to meet RUSH in
 25 person in Turlock later that same day. *Id.* The group conspired together to erase the communications in
 26 which they discussed and planned to attack police from their phones, including the statements described
 27 above,. PSR ¶¶ 27–28; Plea Agmt. at ¶ 2. As BLANCAS told YBARRA a month later, "We burned tf
 28 [the fuck] out of everything" – "All physical files I had were literally burned". PSR ¶ 32.

1 And contrary to what they would all later tell FBI agents, the Grizzlies didn't disband. They just
 2 switched to a different communications platform, one they thought would be more secure. PSR ¶ 28;
 3 Plea Agmt. at ¶ 2. Nor did they appear chastened by the fact that one of their members could be
 4 involved with these officer shootings. Instead, in messages the day after the second shootout, it was
 5 clear that they were mad at him for making it more difficult for them to operate as a group, but not for
 6 allegedly killing police officers. They got over their heartache quickly though, as they began contacting
 7 other Grizzlies and recruiting them to join them on the new communications platform. PSR ¶ 28.

8 On August 6, 2020, two months after the shooting in Santa Cruz county, FBI agents executed
 9 search warrants at several locations, including RUSH's, BLANCAS's, YBARRA's, and MIKSCH's
 10 residences and vehicles. PSR ¶ 29. They seized numerous assembled and disassembled weapons,
 11 including the following items from MIKSCH in San Lorenzo: one assault-style rifle, two handguns, gun
 12 parts and ammunition, body armor and a plate carrier with plates, and Grizzly Scouts documents. *Id.*
 13 Agents also seized their cell phones. Plea Agmt. at ¶ 13. Subsequent examinations of certain of those
 14 phones showed that they were the same devices used by the men on June 6, 2020, when the Grizzlies
 15 were communicating with the staff sergeant who allegedly engaged in a shootout with sheriff's
 16 deputies—but those communications had been erased from their phones. Plea Agmt. at ¶ 2.

17 The grand jury indicted RUSH, BLANCAS, YBARRA, and MIKSCH on the present charges on
 18 March 23, 2021. Dkt. No. 1. On April 8, 2021, agents arrested MIKSCH. He made his initial
 19 appearance the next day and a detention hearing was set for April 14, 2021 upon the government's
 20 motion for detention. Dkt. Nos. 5, 17. Following a detention hearing, MIKSCH was released on bond.
 21 Dkt. No. 20.

22 On September 20, 2021, MIKSCH pleaded guilty to Count One of the Indictment pursuant to a
 23 plea agreement under Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure. Dkt. No. 82. In the
 24 plea agreement, the parties agreed that a reasonable and appropriate sentence was 6 to 12 months of
 25 imprisonment followed by 3 years of supervision, with the government's promises with respect to
 26 MIKSCH and his codefendants contingent on the other codefendants also pleading guilty, the Court
 27 accepting those plea agreements, and MIKSCH and his codefendants appearing for sentencing and
 28 surrendering to serve any sentence imposed by the Court. Dkt. No. 81. The defense reserved the right

1 to request a substitute to incarceration in prison and the government was free to oppose such a
 2 substitution. *Id.*

3 **III. DISCUSSION**

4 **A. Applicable Law**

5 The Court should impose a sentence sufficient, but not greater than necessary, to reflect the
 6 purposes of sentencing that Congress identified in 18 U.S.C. § 3553(a)(2). *United States v. Carty*, 520
 7 F.3d 984, 991 (9th Cir. 2008). The Court should begin the process of determining an appropriate
 8 sentence by calculating the correct sentencing range under the Guidelines. *Id.* After determining the
 9 appropriate Guidelines calculations, the Court should then evaluate the sentence for substantive
 10 reasonableness in light of the factors set out in Section 3553(a). *Carty*, 520 F.3d at 991–93. Under 18
 11 U.S.C. § 3553(a), in arriving at the appropriate sentence for the defendant, the Court should consider
 12 these factors applicable to this case, among others:

- 13 (1) the nature and circumstances of the offense and the history and
 characteristics of the defendant;
- 14 (2) the need for the sentence imposed to reflect the seriousness of the
 offense, to promote respect for the law, and to provide just
 punishment for the offense;
- 15 (3) the need for the sentence imposed to afford adequate deterrence to
 criminal conduct; and
- 16 (4) the need to avoid unwarranted sentence disparities among
 defendants with similar records who have been found guilty of
 similar conduct.

20 **B. Guidelines Calculation**

21 The United States Probation Office (“Probation”) accurately calculates the United States
 22 Sentencing Guidelines in the PSR, and it is consistent with the parties’ plea agreement. PSR ¶¶ 34–44;
 23 Dkt. No. 81 ¶ 7.

24 The PSR correctly calculates the total offense level as 11. PSR ¶ 44. The base offense level is
 25 14 under U.S.S.G. § 2J1.2(a), and a two-level enhancement applies because the offense involved the
 26 destruction of essential records; in this case, records related to the murder of a federal PSO just days
 27 prior under § 2J1.2(b)(3)(B). PSR ¶¶ 34–35. The government agrees with the three-level reduction for
 28 acceptance of responsibility under § 3E1.1 and a two-level reduction for a global disposition among the

1 codefendants under § 5K2.0(a)(2)(B). PSR ¶¶ 41–43. The PSR also correctly calculates the defendant’s
 2 criminal history as category I, as the defendant has no prior criminal history. PSR ¶ 48.

3 Because the total offense level is 11 and the defendant’s criminal history category is I, the
 4 sentencing range under the Guidelines is 8 to 14 months of imprisonment. PSR ¶ 76.

5 **C. Recommendation**

6 The government recommends that the Court impose a sentence of 10 months of imprisonment
 7 followed by three years of supervised release, based upon a consideration of the Guidelines and 18
 8 U.S.C. § 3553(a) factors, which would be sufficient but not greater than necessary based on the nature
 9 and circumstances of the offense, the seriousness of the offense, and the need for deterrence, as well as
 10 MIKSCH’s history and characteristics.

11 *First*, the nature and circumstances of MIKSCH’s offenses support a meaningful custodial
 12 sentence. MIKSCH joined the armed “Grizzly Scouts” militia group, gained responsibilities for its
 13 training and firearms instruction of members, and took part in encouraging aggression against authorities
 14 to fester among the group. MIKSCH had key roles in the group’s “operations orders” that identified law
 15 enforcement as enemies, including in a “quick reaction force” with the staff sergeant who went on to
 16 allegedly kill two law enforcement officers. And while MIKSCH may argue that he did not find the
 17 militia group or have as close contacts with the staff sergeant as others involved in the conspiracy, he
 18 advised that man about law enforcement activity and the fact that law enforcement had a police dog as
 19 the second of two tragic incidents unfolded—then destroyed that evidence. On balance, a 10-month
 20 term of custody appropriately takes into account the nature and circumstances of MIKSCH’s offense.

21 *Second*, the government’s recommended custodial sentence accounts for the seriousness of
 22 MIKSCH’s crimes. In light of MIKSCH’s participation in the Grizzlies’ abhorrent discussions about
 23 committing violence against law enforcement and armed uprising against authorities, as well as the
 24 group’s training and preparations together, MIKSCH conspired with his codefendants to destroy records
 25 relevant to the murder of a federal officer and destroyed those records to obstruct any subsequent
 26 investigation or prosecution. The government’s recommendation of 10 months of custody promotes
 27 respect for the law and provides just punishment for MIKSCH in view of this wrongful conduct.

28 *Third*, in addition to providing specific deterrence to MIKSCH, the Court’s sentence should

1 provide general deterrence to others against conspiring to commit such obstruction in the midst of
2 extremist aggression and potential violence. Accordingly, this case merits a custodial sentence in view
3 of the need to achieve general deterrence for those who may face similar circumstances and be tempted
4 to obstruct justice in violation of the law. The parties also agree on a three-year term of supervised
5 release, including an expanded search condition. Given the nature of MIKSCH's extremist and
6 obstructive conduct, such a term of supervised release with this condition and the conditions
7 recommended by Probation is necessary to serve the interests of deterrence and rehabilitation.

Finally, the government’s recommendation takes into account MIKSCH’s history and characteristics. On the one hand, MIKSCH has no prior criminal history. On the other, however, by all accounts MIKSCH had a positive upbringing and stable childhood free from some of the difficulties faced by his codefendants—underscoring the egregious and inexplicable nature of his conduct in this case. See PSR ¶¶ 57–80. The recommended sentence of 10 months of imprisonment is within the agreed-upon Guidelines, which already includes downward adjustments for acceptance of responsibility and the global disposition of the codefendants from an extremist group.

IV. CONCLUSION

16 For the foregoing reasons, the United States respectfully recommends that the Court impose a
17 sentence of 10 months in custody on MIKSCH, followed by three years of supervised release with the
18 expanded search condition agreed to by the parties and other conditions recommended by Probation.

20 | DATED: February 8, 2022

Respectfully submitted,

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/s/
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